PETER JAMES TENNENT

v.

KAKA SINGH DHALIWAL

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
HASAN LAH JCA
JEFFREY TAN J
[CIVIL APPEAL NO: W-02-1232-2006]
7 APRIL 2009

ADMINISTRATIVE LAW: *Exercise of judicial functions - Domestic tribunal - Enquiry by Stipendiary Stewards under the Malayan Racing Association Rules - Whether case involved public law - Whether court could judicially review decision of the Stipendiary Stewards' enquiry - Whether case involved the law of contract - Jurisdiction of court to strike down contract - Whether court could strike down contract on the basis that contract unreasonable, harsh or unfair*

CONTRACT: *Terms - Construction of - Whether court empowered to strike down contract on the basis that terms are unreasonable, harsh or unfair*

The appellant – a professional horse trainer – appeared before an enquiry conducted by the Stipendiary Stewards on a charge that he had breached his duty as a trainer pursuant to r. 144(4) of the Malayan Racing Association ('MRA') Rules. He was convicted and sentenced *inter alia*, to a one year disqualification. The appellant applied to the High Court for a declaration that r. 144(4) of the MRA rules was null and void, but his application was dismissed. The appellant appealed against the dismissal to the Court of Appeal.

Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

(1) The instant case was not a public law case. Thus, the principles that governed the judicial review of acts or decisions of public decision-takers had no application to the instant case. This was a case governed by the ordinary law of contract. The contract here was contained in the rules of the MRA. The appellant, by agreeing to become a trainer in accordance

with the MRA rules made a contract with the respondent on terms set out in the rules in question. *Clarke v. Dunraven* (refd). (para 5)

(2) In the present case, no contract had been made in the public law sense ousting the rights conferred by art. 5(1) of the Federal Constitution. The present instance merely concerned a contract made between two private persons. Thus, the question of adopting a fair procedure before depriving the appellant of his livelihood did not arise. No court has jurisdiction in private law to strike down a contract or a term in a contract on the ground that it is unreasonable, harsh or unfair. The function or role of a court in private law is merely to interpret and enforce a contract. The grounds on which a contract may be avoided are far too well settled, *eg*, contracts induced by a mistake or misrepresentation and tainted by illegality or bad for want of capacity. It is one thing to say that a contract is void on grounds of public policy: it is quite a different thing to say it is unreasonable and therefore should be struck down. (paras 6, 7 & 8)

(3) Rule 144(4) of the MRA rules means that once a jockey is found liable, the trainer is vicariously liable unless he can show those exculpating circumstances under sub-rule (3). The Stipendiary Stewards thought that the appellant was guilty. The issue was whether the respondent was acting in breach of contract by arriving at that decision. Rule 144(4) contractually permitted the Stipendiary Stewards to do what they did. There was nothing in the rule that said that they had to act fairly or reasonably or in a way that a public decision maker should act. Further, it was not the appellant's case that a term to that effect should be implied into the contract housed in the rules. Neither was it his case that r. 144(4) was void on grounds of public policy. All counsel argued was that the High Court judge had wrongly upheld his conviction – which was not quite correct as the High Court in the instant case was not sitting on appeal. In the instant case, there was no violation of contract. The appellant was thus out of court on his summons. (para 9)

Bahasa Malaysia *Translation Of Headnotes*

Perayu – seorang pelatih kuda profesional – telah hadir dalam satu siasatan yang dijalankan oleh Steward Stipendiari atas tuduhan bahawa beliau telah melanggar tanggungjawabnya sebagai seorang pelatih di bawah per. 144(4) Peraturan-Peraturan Persatuan Lumba Kuda Malaysia ('peraturan MRA'). Beliau telah disabit dan antara lain telah dijatuhkan hukuman hilang kelayakan untuk tempoh setahun. Perayu memohon ke Mahkamah Tinggi untuk deklarasi bahawa per. 144(4) peraturan MRA adalah tak sah dan batal, tetapi permohonannya ditolak. Ini adalah rayuan perayu ke Mahkamah Rayuan terhadap keputusan tersebut.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Kes semasa bukanlah suatu kes undang-undang awam. Oleh itu, prinsip-prinsip yang mengawalselia semakan kehakiman terhadap tindakan-tindakan atau keputusan-keputusan pembuat keputusan awam adalah tidak terpakai kepada kes semasa. Kes di sini dikawalselia oleh undang-undang kontrak biasa. Kontraknya adalah terkandung di dalam peraturan MRA. Perayu, setelah bersetuju untuk menjadi pelatih menurut peraturan MRA, telah memeterai kontrak dengan responden atas terma-terma seperti mana yang dibentangkan di dalam peraturan berkenaan. *Clarke v. Dunraven* (dirujuk).

(2) Dalam kes semasa, tiada kontrak dalam pengertian dan maksud undang-undang awam dimeterai yang menolak hak-hak seperti yang terkandung di dalam fasal 5 Perlembagaan Persekutuan. Kes di sini hanyalah suatu kontrak yang dimeterai di antara dua orang persendirian. Oleh itu, soal perlunya menggunapakai prosedur adil sebelum mata pencarian perayu boleh dijejaskan adalah tidak berbangkit. Tiada mahkamah boleh mempunyai bidangkuaa di sisi undang-undang persendirian untuk membatalkan suatu kontrak atau suatu terma di dalam kontrak atas alasan ianya tidak munasabah, kejam atau tidak adil. Bidang tugas mahkamah dalam undang-undang persendirian hanyalah untuk mentafsir dan menguatkuasakan kontrak. Alasan-alasan di mana sesuatu kontrak boleh dielakkan sudah berdiri tegak dengan begitu lama, seperti kontrak yang dipengaruhi oleh kekhilafan atau salahnyata dan dikotori oleh ketaksahan ataupun tak sah disebabkan ketiadaan kapasiti. Adalah suatu hal untuk menyatakan bahawa suatu kontrak itu

A tak sah disebabkan oleh polisi awam; adalah suatu hal lain pula untuk menyatakan bahawa ia adalah tidak munasabah dan kerana itu harus dibatalkan.

(3) Peraturan 144(4) peraturan MRA bermaksud bahawa sebaik
B seorang joki didapati bersalah, pelatih juga bersalah secara vikariusnya kecuali jika ia dapat membuktikan halkeadaan-halkeadaan di bawah per. kecil (3) yang boleh membebaskannya dari kebersalahan tersebut. Steward Stipendiari merasakan bahawa perayu adalah bersalah. Isunya adalah sama ada
C responden bertindak secara yang melanggar kontrak bilamana mencapai keputusan tersebut. Peraturan 144(4) secara kontraktual membenarkan Steward Stipendiari melakukan apa yang dibuat oleh mereka. Tiada apa-apa pun di dalam peraturan yang mengatakan bahawa mereka harus bertindak
D secara adil atau munasabah atau seperti seorang pembuat keputusan awam harus bertindak. Selain itu, bukanlah menjadi kes perayu bahawa terma sedemikian harus disiratkan ke dalam kontrak yang terkandung di dalam peraturan. Juga bukan kes beliau bahawa per. 144(4) tak sah atas alasan polisi awam.
E Apa yang dihujahkan oleh peguamnya adalah bahawa hakim Mahkamah Tinggi silap dalam mengekalkan sabitannya – yang mana agak tidak betul kerana Mahkamah Tinggi dalam kes semasa tidak bersidang di atas rayuan. Dalam kes semasa tidak wujud apa-apa pelanggaran kontrak. Perayu dengan itu
F terkeluar dari mahkamah berkaitan saman ini.

Case(s) referred to:
Clarke v. Dunraven [1897] AC 59 ***(refd)***

Legislation referred to:
G Federal Constitution, art. 5(1)
Malayan Racing Association Rules, r. 144(4)

For the appellant - Sree Harry; M/s Sree Harry & Co
For the respondent - CP Mahendran; M/s RR Chelliah Brothers

H *[Appeal from High Court, Kuala Lumpur; Originating Summons No: S3-24-1534-2001]*

Reported by Andrew Christopher Simon

I

JUDGMENT

Gopal Sri Ram JCA:

[1] This appeal is directed against the order of the High Court dismissing the appellant's originating summons in which he sought a declaration that r. 144(4) of Malayan Racing Association Rules, which we will refer to as "the rules", is null and void. The facts which form common ground between the parties are as follows.

[2] The appellant is a professional horse trainer. On 14 October 2000 he appeared before an enquiry conducted by the Stipendiary Stewards on a charge that he had breach his duty as a trainer pursuant to r. 144(4) of the rules.

[3] It transpires that the charge arose out of a race in which a horse named "Wonderful General" had taken part. His rider at material time was one Damian Miller. Miller as the jockey was later charged for having failed to ride the horse in question with sufficient vigour and determination and also to have failed to give full opportunity of winning or obtaining the best possible place. He was convicted of that charge and a one year disqualification was imposed on him. As we have already said, the appellant's conviction arose out of r. 144(4) and for convenience we will set out the whole of r. 144 which reads as follows:

> **Races and Running**
>
> 144 (1) Every horse which runs in a race shall be run on its merits. (Amended 12/7/99)
>
> (2) The Rider of every horse shall take all reasonable and permissible measures through out the race to ensure that his horse is given full opportunity of winning or obtaining the best possible placing. (Amended 12/7/99)
>
> (3) It shall be the duty of a Trainer to ensure that adequate instructions are given to the Rider of any horse in his care and no Owner or Trainer shall give any instruction to the Rider of any horse which if obeyed could or would prevent the horse from winning a race or of obtaining the best possible placing, neither shall the Owner, Trainer, the Rider or any other person prevent or try to prevent in any way any horse from winning a race or of obtaining the best possible placing. (Amended 12/7/99)

(4) Where any Rider is found in breach of sub-rule (2) of this Rule, the Trainer of the horse in question shall be deemed to be in breach of this Rule unless the Trainer satisfies the Stipendiary Stewards that the Rider failed to comply with the instruction given to him under sub-rule (3) of this Rule which if followed would have enabled the Rider to have obtained the best possible placing, and in this event the Trainer shall be found not to have been in breach of this Rule. (Amended 4/9/2000)

(5) When in the opinion of the Stipendiary Stewards any person has committed any breach of or is guilty of any offence under sub-rule (2), (3) or (4) of this Rule, the Stipendiary Stewards shall disqualify such person. The disqualification shall be for a period of one (1) year. The Stipendiary Stewards may in addition disqualify such person for any further period not exceeding one (1) year and/or impose a fine not exceeding S$25,000.00 or its equivalent. (Amended 4/9/2000)

(6) Without prejudice to generality of Rule 56B, if a Rider or Trainer becomes a disqualified person under this Rule his permit or license is thereby revoked. (Amended 4/9/2000)

[4] The appellant was convicted and sentenced to one year disqualification. Additionally, his deposit was forfeited and he was directed to transfer all his horses out of their stables within 14 days.

[5] Before us, learned counsel for the appellant submitted that the conviction of his client was wrong because r. 144(4) does not create an offence but it was mere evidential provision. Before we enter upon this issue, we find it necessary to make certain observations on the underlying principle that governs this case which was apparently overlooked by counsel on both sides as well as by the learned judge in the court below. In the first place, we must emphasise that this is not a public law case. Therefore, the principles that govern the judicial review of acts or decisions of public decision-takers have no application to the instant case. It follows from what we have just said that this is a case that is governed by the ordinary law of contract. The contract here is contained in the rules of the Malayan Racing Association. The appellant by agreeing to become a trainer in accordance with those rules made a contract with the respondent. There is nothing unusual about this. This case in fact is similar to *Clarke v. Dunraven* [1897] AC 59 where the owners of two yachts entered them in a

regatta conducted by a yacht club. One of the yachts fouled another. The question was whether there had been a contract made between the parties. Of course there was no direct contractual relationship between the parties. The House of Lord nevertheless held that each participant had made a contract with the yacht club and that there was indeed a contract collateral to that with the club. In short, a contract was constructed. But the present case is a much clearer one. For, as we have already said the appellant readily entered into a contract to become a trainer on terms set out in the rules in question.

[6] In the second place, we do not see how art. 5(1) of the Federal Constitution (relied upon by the appellant) is engaged in the present case. That article prohibits the deprivation of life personal liberty, save in accordance with law. In the present case, no contract has been made in the public law sense ousting the rights conferred by art. 5(1). The present instance merely concerns a contract made between two private persons. So, the question of adopting a fair procedure before depriving of him or her of his or her livelihood does not arise in the case before us.

[7] We have made this observation because we find the following remarks in the judgment under appeal with which we are with respect unable to agree:

> On the second ground of contention, I do not think that sub-rule 4 is unreasonable. Though it provides for the presumption of guilty of the trainer once the rider is found guilty under sub-rule (2), this presumption of guilt may be rebutted which the plaintiff failed to do in the instant case.

[8] We disagree because no court has jurisdiction in private law to strike down a contract or a term in a contract on the ground that it is unreasonable, harsh or unfair. The function or role of a court in that sphere is merely to interpret and enforce a contract. The grounds on which a contract may be avoided are far too well settled for us to regurgitate. Examples are, contracts induced by a mistake or misrepresentation and tainted by illegality or bad for want of capacity. It is one thing to say that a contract is void on grounds of public policy: it is quite a different thing to say it is unreasonable and therefore should be struck down.

[9] So our role and that of the court below is merely one of interpreter. And that brings us to the central question. What does r. 144(4) mean? In our judgment it simply means that once a jockey is found liable, the trainer is vicariously liable unless he can show those exculpating circumstances to which sub-rule (3) refers. The Stipendiary Stewards thought that the appellant was guilty. The issue here then is whether the respondent was acting in breach of contract by arriving at that decision. Now, you have r. 144(4) which contractually permits the Stipendiary Stewards to do what they did. There is nothing in the rule that says that they must act fairly or reasonably or in a way that a public decision maker should act. And it is not the appellant's case that a term to that effect should be implied into the contract housed in the rules. Neither is it his case that r. 144(4) is void on grounds of public policy. All that his counsel argued was that the learned judge had wrongly upheld his conviction. But that is not quite correct as the High Court in the present instance was not sitting on appeal. To put the matter shortly, there is no violation of contract in present instance. Once you arrive at that conclusion, it follows that the appellant is out of court on his summons.

[10] For the reasons already given, we would dismiss this appeal and affirm the order made by the court below *albeit* on different grounds. All the usual orders following a dismissal are hereby made.